



Docket No.: SON-3141

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Yasutaka OGASAWARA et al.

Application No.: 10/541,500

Confirmation No.: 2009

Filed: July 7, 2005

Art Unit: 2446

For: SERVICE MANAGING APPARATUS AND
METHOD, AND SERVICE PROVIDING
SYSTEM AND METHOD

Examiner: G. W. Li

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Notification of Non-Compliant Appeal Brief (37 CFR 41.37) dated October 9, 2009.

This is an Appeal Brief under 37 C.F.R. § 41.37 appealing the Final Office Action of the Examiner dated December 8, 2008. This Brief is also in furtherance of the Notice of Appeal previously filed on April 29, 2009 along with a Request for Pre-Appeal Brief Panel Review. A Panel Decision dated July 13, 2009 allowed this matter to proceed to the Board of Patent Appeals and Interferences.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

I. Real Party In Interest

- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds of Rejection to be Reviewed on Appeal
- VII. Argument
- VIII. Claims
- IX. Evidence
- X. Related Proceedings

- Appendix A Claims
- Appendix B Additional Evidence (none)
- Appendix C Related Proceedings (none)

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is Sony Corporation, of Tokyo, Japan. An assignment of all rights in the present application to Sony Corporation was executed by the inventors and recorded by the United States Patent and Trademark Office at Reel 017475, Frame 0258.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Current Status of Claims

A complete listing of the claims with corresponding status is provided as follows:

Claims 1, 3-4, 6-8, 10-11, 13-14, 16-17, 19-21, 23 and 25-39. (Rejected).

Claims 2, 5, 9, 12, 15, 18, 22 and 24. (Cancelled).

B. Claims On Appeal

Appellant hereby appeals the final rejection of claims 1, 3-4, 6-8, 10-11, 13-14, 16-17, 19-21, 23 and 25-23.

IV. STATUS OF AMENDMENTS

A Non-Final Office Action rejecting claims 1, 3-4, 6-8, 10-11, 13-14, 16-17, 19-21, 23 and 25-33 was mailed on June 2, 2008. In response to that Action, an Amendment was filed on September 2, 2008, amending claims 3, 19, 20 and 33 and adding new claims 34-39 such that claims 1, 3-4, 6-8, 10-11, 13-14, 16-17, 19-21, 23 and 25-39 were pending in the application. This amendment was entered, and all of the claims were then rejected in a Final Office Action dated December 8, 2008. Appellant filed a Request for Reconsideration in response to this, on February 2, 2009. Following an Advisory Action maintaining the grounds of rejection, Appellant then filed a Notice of Appeal and Request for Pre-Appeal Brief Panel Review on April 29, 2009. A Decision on Panel Review dated July 13, 2009 allowed the matter to proceed to the Board of Patent Appeals and Interferences.

V. SUMMARY OF CLAIMED SUBJECT MATTER

References to the specification and drawings are made below to illustrate an example of the claimed invention in summary form. Reference to a figure or portion of text does not constitute an indication or admission that the cited passage and/or figure is the only example in Appellant's application as filed. Additionally, these citations are for illustrative purposes and are not intended to limit the scope of the invention.

Independent claim 1 recites: [a] A service managing apparatus (e.g., FIG. 2, service provider 2) for managing an information transmission service in which digital content is sent in real time between communication devices connected to each other over a network, the apparatus comprising:

a communication controlling means for controlling the communication with each of the communication devices (e.g., FIG. 2, communication server 11; FIG. 3A; p. 22, line 12 through p. 23, line 5);

an information registering means for maintaining registration information on more than one piece of digital content available from those of the communication devices that are registered as an information provider (e.g., FIG. 2, DB Server 13; FIG. 3B; p. 22, line 12 through p. 23, line 5); and

an information managing means for dynamically generating, based on the registration information, choices-window information from which selection is made of a desired one of the plurality of pieces of offered digital content by those of the communication devices that are to receive the desired piece of offered digital content (e.g., FIG. 2, Web Server 12; FIG. 3C; p. 22, line 12 through p. 23, line 5),

the information managing means updating, when the registration information has been updated based on updating information reflecting the current status of the information provider, the choices-window information on the basis of the updated registration information, wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time (e.g., p. 20, line 15 through p. 21, line 8; p. 29, line 3 through p. 32, line 21; p. 33, line 1 through p. 38, line 6), and

wherein the communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital

content being provided in real time when it is indicated as currently available in real time (e.g., p. 38, line 7 through p. 42, line 11).

Independent claim 8 recites: [a] service managing method of managing an information transmission service in which digital content is sent in real time between communication devices connected to each other over a network, the method comprising:

an information managing step in which, referring to an information registering means in which information on more than one piece of offered digital content available from those of the communication devices that are registered as an information provider is maintained as registration information, there is dynamically generated choices-window information from which selection is made of a desired one of the plurality of pieces of offered digital content by those of the communication devices that are to receive the desired piece of offered digital content (e.g., p. 17, line 13 through p. 19, line 5; FIG. 2; communication server 11; FIG. 3A; p. 22, line 12 through p. 23, line 5; DB Server 13; FIG. 3B; p. 22, line 12 through p. 23, line 5; Web Server 12; FIG. 3C; p. 22, line 12 through p. 23, line 5);

an information updating step of updating, when the registration information has been updated based on updating information reflecting the current status of the information provider, the choices-window information on the basis of the updated registration information, wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time (e.g., p. 20, line 15 through p. 21, line 8; p. 29, line 3 through p. 32, line 21; p. 33, line 1 through p. 38, line 6), and

a controlling step of controlling the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time (e.g., p. 38, line 7 through p. 42, line 11).

Independent claim 14 recites: [a] service providing system which provides an information transmission service in which digital content is sent in real time between communication devices connected to each other over a network , the system comprising:

a plurality of communication devices to provide or receive offered digital content to be provided by an information provider or to be used by an information user, respectively, each as a user of the information transmission service (e.g., FIG. 2, elements 4a-b; FIG. 3D; p. 23, line 6 through p. 26, line 18),

each of the communication devices including a communication means for sending or receiving offered digital content to or from the other communication device as a counterpart (e.g., FIG. 2, elements 4a-b; FIG. 3D; p. 23, line 6 through p. 26, line 18); and

a service management device (e.g., FIG. 2, service provider 2) connected to each of the communication devices via a network to manage the information transmission service,

the service management device including:

a communication controlling means for controlling the communication with each of the communication devices (e.g., FIG. 2, communication server 11; FIG. 3A; p. 22, line 12 through p. 23, line 5);

an information registering means for maintaining registration information on more than one piece of digital content available from those of the communication devices that are registered as information providers (e.g., FIG. 2, DB Server 13; FIG. 3B; p. 22, line 12 through p. 23, line 5); and

an information managing means for dynamically generating, based on the registration information, choices-window information from which selection is made of a desired one of the plurality of pieces of offered digital content by those of the communication devices that are to receive the desired piece of offered digital content (e.g., FIG. 2, Web Server 12; FIG. 3C; p. 22, line 12 through p. 23, line 5),

the information managing means updating, when the registration information has been updated based on updating information reflecting the current status of the information provider, the choices-window information on the basis of the updated registration information, wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time (e.g., p. 20, line 15 through p. 21, line 8; p. 29, line 3 through p. 32, line 21; p. 33, line 1 through p. 38, line 6), and

wherein the communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time (e.g., p. 38, line 7 through p. 42, line 11).

Independent claim 21 recites: [a] service providing method for a service providing system including a plurality of communication devices to send or receive offered digital content to be provided by an information provider or to be used by an information user, respectively, each as a user of the information transmission service in which information is sent from one of communication devices connected to each other over a network to the other, and vice versa, in real time, and a service management device connected to each of the communication devices via the network to manage the information transmission service, the method comprising:

an information registering step in which information on more than one piece of offered digital content available from those of the communication devices that are registered as information providers is maintained as registration information into an information registering means of the service management device (e.g., FIG. 2, DB Server 13; FIG. 3B; p. 22, line 12 through p. 23, line 5);

an information managing step in which, referring to an information registering means of the information management device in the service management device, there is dynamically generated choices-window information from which an information user of the offered digital

content selects a desired one of the plurality of pieces of offered digital content for the communication device that is to receive the desired piece of offered digital content (e.g., p. 17, line 13 through p. 19, line 5; FIG. 2; communication server 11; FIG. 3A; p. 22, line 12 through p. 23, line 5; DB Server 13; FIG. 3B; p. 22, line 12 through p. 23, line 5; Web Server 12; FIG. 3C; p. 22, line 12 through p. 23, line 5);

a registered information updating step of updating the registration information on the basis of updating information reflecting the current status of the information provider (e.g., p. 20, line 15 through p. 21, line 8; p. 29, line 3 through p. 32, line 21; p. 33, line 1 through p. 38, line 6);

a choices-window information updating step in which an information management means updates, when the information registering means has been updated based on the updating information, the choices-window information on the basis of the updated registration information, wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time (e.g., p. 20, line 15 through p. 21, line 8; p. 29, line 3 through p. 32, line 21; p. 33, line 1 through p. 38, line 6); and

a controlling step of controlling the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time (e.g., p. 38, line 7 through p. 42, line 11).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issues presented for consideration in this appeal, with separate arguments as noted in the following sections, are as follows:

Whether the Examiner erred in rejecting claims 1, 3-4, 6-8, 10-11, 13-14, 16-17, 19-21, 23 and 25-33 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,266,649 to

Linden et al. (“Linden”) in view of U.S. Pat. No. 5,933,811 to Angles et al. (“Angles”), and further in view of U.S. Pub. No. 2004/0024652 to Buhse et al. (“Buhse”).

Whether the Examiner erred in rejecting claims 34-39 under 35 U.S.C. § 103(a) as being unpatentable over Linden, Angles, and Buhse, and further in view of U.S. Pat. No. 6,996,094 to Cave et al. (“Cave”).

These issues are discussed in the following section, with subsections corresponding to the separate arguments.

VII. ARGUMENT

VII.A Introduction.

In the Final Office Action of December 8, 2008, the Examiner erred in rejecting claims 1-28 under 35 U.S.C. § 103(a) as being unpatentable over Yamaguchi in view of Koyama. Consistent with the grouping of claims in the following sections, these rejections are variously deficient as noted in the separate arguments.

VII.B Linden, Angles, and Buhse fail to disclose or suggest the features recited in claims 1, 6-8, 13-14, 16, 20-21 and 25-33.

Claim 1 recites: *[a] service managing apparatus for managing an information transmission service in which digital content is sent in real time between communication devices connected to each other over a network, the apparatus comprising:*

a communication controlling means for controlling the communication with each of the communication devices;

an information registering means for maintaining registration information on more than one piece of digital content available from those of the communication devices that are registered as an information provider; and

an information managing means for dynamically generating, based on the registration information, choices-window information from which selection is made of a desired one of the plurality of pieces of offered digital content by those of the communication devices that are to receive the desired piece of offered digital content,

the information managing means updating, when the registration information has been updated based on updating information reflecting the current status of the information provider, the choices-window information on the basis of the updated registration information, wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time, and

wherein the communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time.

These claimed features accommodate the sending of digital content between communications devices that are connected to each other. That is, the digital content itself is selected and then received by one of the communication devices, with the digital content itself being provided to that communication device from another of the communication devices (the information provider).

Independent claim 1 recites a service management apparatus that manages an information transmission service in which the digital content is sent in real time between the so-connected communication devices. Pursuant to this, an information registering means registers the digital content available from those of the communication devices that are registered as an information provider. The information managing means dynamically generates choices-window information for selection of a desired piece of offered digital content for the communication device that is to receive the desired piece of offered digital content. The communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider. Additionally, the

choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time. When this is the case, the communication controlling means controls the connection so that the digital content can be provided in real time between the respective communication devices.

Essentially, the Examiner relies upon a reference (Linden) disclosing a web site that allows collaborative recommendations of books and other items. The Examiner analogizes the provision of book recommendations on the web site to Applicant's claimed sending of digital content. While a recommendation itself may be a piece of "digital content" in a general sense, for reasons outlined in detail in the following sections, the Examiner's attempt to map this reference to Appellant's claimed invention breaks down in several instances, and for that reason the Examiner's rejection of the claims must be reversed.

IV.B.1. *Linden fails to address in any way controlling a connection between two respective communication devices so that the digital content can be provided from one communication device to the other.*

Linden fails to address in any way controlling a connection between two respective communication devices so that the digital content can be provided from one communication device to the other. As such, there are also various claimed, particular features in support of such digital content provision that are wholly absent from Linden.

Linden discloses a system that allows for collaborative recommendations wherein computer users may rate various items that are available through the web site/server. The computer users do not register "digital content" that is to be provided by their computer, nor do they select from among the offered digital content so that it can be sent from one of the computers to another of the computers that may be connected through the network.

Linden at least fails to disclose or in any way suggest "*wherein the communication controlling means controls the connection between the communication device that receives the*

desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time,” as claimed by Appellant.

At best, one “communication device” in Linden may post a recommendation about some content (e.g., a paperback book, a chair, etc.) that is available from a separate service provider. This is obviously not the provision of digital content. Nor is it the provision of digital content, or controlling connection between one communication device and another communication device to provide digital content there-between in real time.

Presumably, according to the apparent stance in the Action, the “recommendation” itself, or the link to the title of the book, or the like, is the “digital content”. However, in these instances, the recommendation is merely posted by the server, with the server conveying the information to another user browsing available content. **There is never an establishment of a connection between the communication devices (the recipient and the provider)**, let alone in response to selection of content, or further in response to selection based upon indicated availability of the digital content from the information provider communication device in real time. With this degree of deficiency, it is clear that Linden has little, if any, disclosure pertinent to Appellant’s claimed invention.

To clarify, the claim is reproduced as follows to highlight the various areas where the attempted analogy between Linden and the claim breaks down, with the claim language in italics and Appellant’s commentary in bold: Specifically, claim 1 recites: *[a] service managing apparatus for managing an information transmission service in which digital content is sent in real time between communication devices connected to each other over a network, the apparatus comprising:*

a communication controlling means for controlling the communication with each of the communication devices;

an information registering means for maintaining registration information on more than one piece of digital content available from those of the communication devices that are registered as an information provider (these features are not shown in Linden. If the “digital content” is the title or the recommendation, the analogy fails as the claim requires registration of the digital content as being available from the registered information provider); and

an information managing means for dynamically generating, based on the registration information, choices-window information from which selection is made of a desired one of the plurality of pieces of offered digital content by those of the communication devices that are to receive the desired piece of offered digital content,

the information managing means updating, when the registration information has been updated based on updating information reflecting the current status of the information provider, the choices-window information on the basis of the updated registration information, wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time (these features are not shown in Linden. If the “digital content” is the title or recommendation, that information is merely presented by the web site server to another user. There is never any indication whether “the communication device that is the information provider” can provide the offered digital content in real time. There is no maintenance of the “current status of the information provider” at all, let alone in support of communicating whether the registered communication device can provide the offered digital content in real time), and

wherein the communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time (these features are not shown in Linden. There is no established connection between communication devices (provider and receiver) or, of course, any indication whether the offered digital content is available in real time or provision of digital content accordingly.).

IV.B.2. The Examiner erroneously alleges that claim 1 does not require separate communication devices, one providing digital content and the other receiving digital content, as well as establishing connection between the former and latter communication devices.

The Examiner erroneously alleges that claim 1 does not require separate communication devices, one providing digital content and the other receiving digital content, as well as establishing connection between the former and latter communication devices. (See, e.g., Advisory Action dated April 6, 2009, at p. 2, In response to Argument E). This is an inaccurate assertion. It is quite clear that the claims recite two separate communication devices, one being the communication device that is the information provider, and the other being the communication device that receives the desired piece of digital content.

For ease of reading, various relevant portions of the claim that support Appellant's position are reproduced as follows: "[a] service managing apparatus for managing an information transmission service in which digital content is sent in real time between communication devices connected to each other over a network ... comprising ... maintaining registration information on more than one piece of digital content available from those of the communication devices that are registered as an information provider ...[wherein] selection is made of a desired one of the plurality of pieces of offered digital content by those of the communication devices that are to receive the desired piece of offered digital content [and] ... choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time, and wherein the communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider"

The above demonstrates that the features are indeed well represented in the claims, as well as the extent to which the claim and the Linden reference are being misconstrued to attempt to read the claims on the reference.

IV.B.3. *Even if the “recommendation” or “title” of work displayed on a Linden website is construed as “digital content”, the Linden reference remains variously deficient in failing to disclose the type of choices-window information and corresponding communication control claimed by Appellant.*

Even if the “recommendation” or “title” of work displayed on a Linden website is construed as “digital content”, the Linden reference remains variously deficient. For example, Linden does not disclose or suggest “*wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time,*” or “*wherein the communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time,*” as claimed by Appellant.

Linden discloses generating recommendations that are specific to a shopping cart for offline purchase following a checkout process. (See 6:52-67 of Linden). This is not an example of registering a device as an information provider of digital content, or providing an indication that the corresponding digital content is available in real time, or of providing the desired piece of offered digital content in real time, from the registered communication device that is the information provider to the registered communication device that is to receive the digital content.

The Action seeks to address this deficiency by claiming that the server filters what is ultimately shown to the other user as being available. Again, this ignores the information provider and information recipient roles of the two communication devices. In no way does the recommendation of a product constitute “*wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time,*” as claimed by Appellant.

In Linden, the only analogous window-choices would be the content available from the server. This is not an example of offered digital content, and “choices” are not presented in the claimed fashion. Moreover, real time provision of the digital content is not in any way addressed, let alone real time provision of the digital content from the communication device (rather than from the server as is the case in Linden).

IV.B.4. *Angles and Buhse do not remedy the deficiencies of Linden.*

Angles does not remedy the deficiencies of Linden. Angles discloses a system for delivering customized advertisements within interactive communication systems. When a user of a “consumer computer” accesses an offering from a content provider computer, a corresponding advertisement provider computer generates a custom advertisement based upon the user’s profile, and combines that custom advertisement with the offering being provided by the content provider computer for display by the consumer computer.

Although some “content” is arguably delivered from the advertisement provider computer to the consumer computer (*i.e.*, the customized ads, presumably within web pages or the like that are accessed through the content provider computer), as with the Linden reference there is clearly no disclosure or suggestion of the features of having choices-window information *from which selection is made of a desired one of the plurality of pieces of offered digital content by those of the communication devices that are to receive the desired piece of offered digital content.*” Even under the strained interpretation of this reference that appears to have been maintained by the Examiner in the Action, there is no reasonable instance of selection of the desired content in a choices window as claimed.

The Action references prior registration of a user with the advertisement provider as allegedly disclosing this feature. Even assuming that this is disclosed, this is merely a prior registration in which, perhaps, a user enters profile information or preferences. It has nothing to do with available digital content from the registrant or the selection of the same, and the reference

to this registration process only further highlights the deficiency of the combination offered by the Examiner.

It bears repeating that the claims actually recite “*wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time,*” and “*wherein the communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time,*” and that neither reference contains any disclosure whatsoever of these claimed features.

In addition to the above-noted inadequacies, the Action notes that the combination of Linden together with Angles still does not disclose maintaining registration information on more than one piece of digital content from registered communication devices, offered digital content in real time, and offered content being provided in real time when it is indicated as being offered in real time. (See Office Action, at p. 9).

Buhse remedies neither the deficiencies noted in the Action nor the additional deficiencies noted above regarding Linden and Angles. Buhse discloses a digital distribution platform that provides a common messaging system that is said to be flexible while at the same time providing digital rights management enforcement. Buhse clearly describes a system wherein a variety of devices communicate with the system to review and acquire content from the system, not from other devices registered with the system. There is no mention of the establishment of connections between separate communication devices of information providers and information recipients wherein the content is then provided from the information provider communication device to the communication device that is to receive the digital content. The available “digital products” are merely those available through the system, not from one communication device to the other as claimed.

Thus, since Linden, Angles, and Buhse, whether taken alone or in combination, fail to yield the claimed features recited in Appellant's claim 1, Appellant submits that a *prima facie* case of obviousness is not present for that claim.

For reasons similar to those provided regarding claim 1, independent claims 8, 14 and 21 are also neither disclosed nor suggested by the relied-upon references.

It is also noted that, although the absence of claimed features from even the combination of references is sufficient to draw a conclusion that the *prima facie* case of obviousness has not been presented, the combination itself is faulty. There is no logic or clear presentation as to how these references could possibly be combined in the fashion offered in the Action, as they each are in different technology areas and each solve wholly different problems.

VII.C Linden, Angles, and Buhse fail to disclose or suggest the features recited in dependent claims 3 and 10.

Appellant's claim 3 recites "[t]he apparatus according to claim 1, wherein the information managing means generates the choices-window information from which selection is available only for digital content that can currently be provided in real time."

The Action alleges that Linden discloses these claimed features, with a vague reference to a passage indicating that a filtered list can be shown to a user. The cited listing has nothing to do with whether digital content can currently be provided in real time and has no bearing on what is claimed by Appellant.

VII.D Linden, Angles, and Buhse fail to disclose or suggest the features recited in dependent claims 4, 11, 17 and 23.

Appellant's claim 4 recites "[t]he apparatus according to claim 1, wherein the updating information includes types of more than one media which can be used for the real-time provision of the offered digital content."

The Action alleges that Buhse teaches these claimed features, but this is not correct. As noted, the claimed features offer an indication of types of media that are available. The passage cited in the Action as evidence of disclosure of these features in Buhse merely notes that platform independent content is provided. This is not what is claimed by Appellant. First, as noted above, Buhse merely discloses a system that offers content to system users. There is no connection of information provider devices to information recipient devices or any kind of assessment as to whether any content can be provided there-between, real time or otherwise. It follows that there is clearly no disclosure or suggestion of updating information that includes more than one media type that can be used for real time provision of the offered digital content.

VII.E Linden, Angles, and Buhse fail to disclose or suggest the features recited in dependent claim 19.

By way of example, Appellant's claim 19 recites: "[t]he system according to claim 14, wherein:

the updating information includes information indicative of the position of the communication device which sends the offered digital content; and

the communication controlling means controls, based on the position information, the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider."

The Action alleges that column 7, lines 20-39 of Linden offer an example of these claimed features. This passage merely indicates that a web site may have a user profile database. There is no mention of any kind regarding the indication of the **position** of the communication device that sends the offered digital content, or the related control of the connection based upon this position information.

These and other dependent claim features are wholly absent from the relied-upon references.

Accordingly, Appellant respectfully requests reconsideration and withdrawal of the rejection of the claims under 35 U.S.C. § 103(a) as being unpatentable over the combination of Linden, Angles, and Buhse.

VII.F Linden, Angles, Buhse, and Cave fail to disclose or suggest the features recited in claims 34-39.

Claims 34-39 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Linden, Angles, and Buhse, and further in view of U.S. Pat. No. 6,996,094 to Cave et al. ("Cave"). This rejection is traversed.

These claims variously depend from the independent claims discussed above, and therefore incorporate the features recited therein and absent from the relied-upon references for the noted reasons. Cave does not remedy these deficiencies.

Moreover, the dependent claims also separately recite features that are not disclosed or suggested by the combination of references. For example, claim 34 recites: "[t]he apparatus according to claim 1, wherein the communication devices are voice over internet protocol devices, and wherein when selection is made of a desired one of the plurality of pieces of offered digital content, the communication controlling means establishes a session between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider to accommodate providing the offered digital content in real time."

Cave does not disclose or suggest these claimed features. At best, Cave merely discloses that VOIP devices are known in a general sense, with no indication whatsoever of providing the above-recited features of claim 34. That is, there is no mention of responding to a selection of a desired piece of offered digital content available from a VOIP communication device by establishing a session between the selecting and providing VOIP communication devices to accommodate providing the digital content in real time.

A review of the references and record also manifests that there has been no assessment of the differences between these claims and the relied-upon references, and no assessment whatsoever as to how the Cave reference could possibly be combined with the other relied-upon references. Even with the understanding that an explicit motivation to combine the references may not necessarily be required, there is no technical sense as to how the artisan would ever combine the references in the proffered fashion. At best, the rejection of these claims amounts to a hind-sighted, patchwork attempt to reconstruct Appellant's claimed invention.

The remaining dependent claims 35-39 are similarly neither disclosed nor in any way suggested by the relied-upon references. It is also noted that there has been no assessment as to how yet another disparate reference would be combined with the remaining references. The original combination is faulty, and the attempted addition of the Cave reference only exacerbates the problems with the proposed combination.

* * * *

For the foregoing reasons, Appellant respectfully requests reversal of the Examiner's rejection of claims 1, 3-4, 6-8, 10-11, 13-14, 16-17, 19-21, 23 and 25-33 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Linden, Angles, and Buhse, and the Examiner's rejection of claims 34-39 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Linden, Angles, Buhse, and Cave.

VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

IX. EVIDENCE

No evidence pursuant to §§ 1.130, 1.131, or 1.132, or additional evidence entered by or relied upon by the Examiner is being submitted.

X. RELATED PROCEEDINGS

No related proceedings are referenced in section II above, or copies of decisions in related proceedings are not provided.

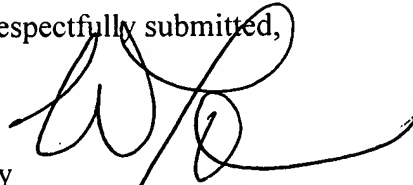
Conclusion

The claims are considered allowable for the same reasons discussed above, as well as for the additional features they recite.

Reversal of the Examiner's decision is respectfully requested.

Dated: October 15, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'CT', written over a horizontal line.

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APPENDIX A - claims

1. A service managing apparatus for managing an information transmission service in which digital content is sent in real time between communication devices connected to each other over a network , the apparatus comprising:

a communication controlling means for controlling the communication with each of the communication devices;

an information registering means for maintaining registration information on more than one piece of digital content available from those of the communication devices that are registered as an information provider; and

an information managing means for dynamically generating, based on the registration information, choices-window information from which selection is made of a desired one of the plurality of pieces of offered digital content by those of the communication devices that are to receive the desired piece of offered digital content,

the information managing means updating, when the registration information has been updated based on updating information reflecting the current status of the information provider, the choices-window information on the basis of the updated registration information, wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time, and

wherein the communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time.

2. (Cancelled).

3. The apparatus according to claim 1, wherein the information managing means generates the choices-window information from which selection is available only for digital content that can currently be provided in real time.

4. The apparatus according to claim 1, wherein the updating information includes types of more than one media which can be used for the real-time provision of the offered digital content.

5. (Canceled).

6. (Original) The apparatus according to claim 1, wherein:
the information managing means receives the registered information and registers it into the information registering means; and
the communication device receives the updating information and updates the registered information.

7. The apparatus according to claim 6, wherein the communication controlling means receives the updating information from the communication device which provides the digital content in real time.

8. A service managing method of managing an information transmission service in which digital content is sent in real time between communication devices connected to each other over a network, the method comprising:

an information managing step in which, referring to an information registering means in which information on more than one piece of offered digital content available from those of the communication devices that are registered as an information provider is maintained as registration information, there is dynamically generated choices-window information from which selection is made of a desired one of the plurality of pieces of offered digital content by those of the communication devices that are to receive the desired piece of offered digital content,

an information updating step of updating, when the registration information has been updated based on updating information reflecting the current status of the information provider, the choices-window information on the basis of the updated registration information, wherein the

choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time, and

a controlling step of controlling the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time.

9. (Cancelled).

10. The method according to claim 8, wherein in the information managing step, there is generated the choices-window information from which selection is available only for digital content that can currently be provided in real time.

11. The method according to claim 8, wherein the updating information includes types of more than one media which can be used for the real-time provision of the offered digital content.

12. (Canceled).

13. The method according to claim 8, wherein in the information updating step, the choices-window information is updated based on the registered information updated with the updating information received from the communication device which provides the offered digital content in real time.

14. A service providing system which provides an information transmission service in which digital content is sent in real time between communication devices connected to each other over a network, the system comprising:

a plurality of communication devices to provide or receive offered digital content to be provided by an information provider or to be used by an information user, respectively, each as a user of the information transmission service,

each of the communication devices including a communication means for sending or receiving offered digital content to or from the other communication device as a counterpart; and
a service management device connected to each of the communication devices via a network to manage the information transmission service,
the service management device including:
a communication controlling means for controlling the communication with each of the communication devices;
an information registering means for maintaining registration information on more than one piece of digital content available from those of the communication devices that are registered as information providers; and
an information managing means for dynamically generating, based on the registration information, choices-window information from which selection is made of a desired one of the plurality of pieces of offered digital content by those of the communication devices that are to receive the desired piece of offered digital content,
the information managing means updating, when the registration information has been updated based on updating information reflecting the current status of the information provider, the choices-window information on the basis of the updated registration information, wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time, and
wherein the communication controlling means controls the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time.

15. (Cancelled).

16. The system according to claim 14, wherein:

the communication controlling means updates the information registering means when the information user has been authenticated with the user identification information..

17. The system according to claim 16, wherein:

the updating information includes media information indicative of the type of a media which can be used by the communication device to send the offered digital content when providing the offered digital content; and

the communication controlling means updates the information registering means with the information indicative of whether the information provider can currently provide the offered digital content and media information included in the updating information.

18. (Canceled).

19. The system according to claim 14, wherein:

the updating information includes information indicative of the position of the communication device which sends the offered digital content; and

the communication controlling means controls, based on the position information, the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider.

20. The system according to claim 14, wherein:

the communication controlling means includes a call controlling means for sending and receiving a connection control signal for establishing the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider; and

the connection controlling means receives the connection control signal from the call controlling means in the communication device and controls the connection between both the communication devices.

21. A service providing method for a service providing system including a plurality of communication devices to send or receive offered digital content to be provided by an information

provider or to be used by an information user, respectively, each as a user of the information transmission service in which information is sent from one of communication devices connected to each other over a network to the other, and vice versa, in real time, and a service management device connected to each of the communication devices via the network to manage the information transmission service, the method comprising:

- an information registering step in which information on more than one piece of offered digital content available from those of the communication devices that are registered as information providers is maintained as registration information into an information registering means of the service management device;

- an information managing step in which, referring to an information registering means of the information management device in the service management device, there is dynamically generated choices-window information from which an information user of the offered digital content selects a desired one of the plurality of pieces of offered digital content for the communication device that is to receive the desired piece of offered digital content;

- a registered information updating step of updating the registration information on the basis of updating information reflecting the current status of the information provider;

- a choices-window information updating step in which an information management means updates, when the information registering means has been updated based on the updating information, the choices-window information on the basis of the updated registration information, wherein the choices-window information includes information indicative of whether the communication device that is the information provider can currently provide the offered digital content in real time; and

- a controlling step of controlling the connection between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider, with the desired piece of offered digital content being provided in real time when it is indicated as currently available in real time.

22. (Cancelled).

23. The method according to claim 21, wherein:

the updating information includes information indicative of the type of a media which can be used when providing the offered digital content; and

in the choices-window information updating step, the choices-window information is made to reflect the information indicative of whether the information provider can currently provide the offered digital content in real time and media information included in the updating information.

24. (Canceled).

25. The method according to claim 21, wherein:

the updating information is indicative of the position of the communication device which sends the offered digital content; and in the controlling step, there is controlled, based on the position information, the connection between the communication device which sends the selected offered digital content and that which has selected the desired offered digital content.

26. The apparatus according to claim 1, wherein the digital content is video content.

27. The apparatus according to claim 1, wherein the digital content is audio content.

28. The method according to claim 8, wherein the digital content is video content.

29. The method according to claim 8, wherein the digital content is audio content.

30. The system according to claim 14, wherein the digital content is video content.

31. The system according to claim 14, wherein the digital content is audio content.

32. The method according to claim 21, wherein the digital content is video content.

33. The method according to claim 21, wherein the digital content is audio content.

34. The apparatus according to claim 1, wherein the communication devices are voice over internet protocol devices, and wherein when selection is made of a desired one of the plurality of pieces of offered digital content, the communication controlling means establishes a session between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider to accommodate providing the offered digital content in real time.

35. The apparatus according to claim 34, wherein the communication controlling means establishes the session between the communication devices without requiring user input of connection addresses from the respective communication devices.

36. The method according to claim 8, wherein the communication devices are voice over internet protocol devices, and wherein when selection is made of a desired one of the plurality of pieces of offered digital content, the controlling step establishes a session between the communication device that receives the desired piece of offered digital content and the communication device that is the information provider to accommodate providing the offered digital content in real time.

37. The method according to claim 36, wherein the session is established between the communication devices without requiring user input of connection addresses from the respective communication devices.

38. The system according to claim 14, wherein the communication devices are voice over internet protocol devices, and wherein when selection is made of a desired one of the plurality of pieces of offered digital content, the communication controlling means establishes a session between the communication device that receives the desired piece of offered digital content and the

communication device that is the information provider to accommodate providing the offered digital content in real time.

39. The system according to claim 38, wherein the communication controlling means establishes the session between the communication devices without requiring user input of connection addresses from the respective communication devices.

APPENDIX B – ADDITIONAL EVIDENCE

None.

APPENDIX C – RELATED PROCEEDINGS

None.